IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 29366 of 1997

Between:

I.Ramachandra Rao, S/o.Late I.Mallikarjuna Rao,
R/o. H.No. 273, Road No. 2 , Yellareddyguda,
Srinagarcolony, Hyderabad-500 073.

..... PETITIONER

AND

1 The Chairman,
A.P., Housing Board, Gruhakalpa,
Nampally, Hyderabad.
2 The Executive Engineer,
A.P. Housing Board, Basent Road,
Governorpet, Vijayawada.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate order or direction or a writ particularly one in the nature of Writ of Mandamus declaring that the action of the respondents in Collecting Excess amounts of Rs. 35,637-86 Ps. from the petitioner for allotment of Quarter No. 5-B at Demudu Cheruvu, Ongole in Municipal Ward No. 1, Block-26 is arbitrary, illegal and unsustainable and there by to return the amounts including that of with nominal Interest from the date on which the petitioner has deposited the excess amounts.

Counsel for the Petitioner: MR.SAMINENI KISHORE

Counsel for the Respondents: MR.J.PRABHAKAR

The Court made the following :

ORDER:

By this writ petition, the petitioner seeks to declare the action of the respondents in collecting excess amount of Rs.35,697-85 ps., from him for allotment of Quarter No.5-B at Demudu Cheruvu, Ongole, Prakasam District, as arbitrary and illegal, and consequently to direct the respondents to return the said amount with nominal interest.

The petitioner states that pursuant to a notification dated 20-9-1968, issued by the respondent-Housing Board, he applied for allotment of a quarter under M.I.G. scheme. He states that as per the notification, the total cost of the quarter is Rs.28,500/-. On his depositing 50% of the total cost i.e. Rs.13,250/-, the respondent-Housing Board by proceedings dated 28-3-1976, allotted him the quarter in question. The remaining amount has to be paid in yearly instalments at the rate of Rs.3,190/- each. According to him, altogether he paid an amount of Rs.73,325-85 ps., which is in excess of Rs.35,697-85 ps. over and above the total cost of Rs.28,500/-. The petitioner states that the escalation in the cost is abnormal. Though he made several representations, some of which are dated 22-4-1995, 05-7-1995 and 22-8-1995, requesting the respondents to return the excess amount, the respondents have not taken any action in the matter. Hence, the writ petition.

The respondents filed a counter denying the allegations made in the affidavit filed in support of the writ petition. It is stated that as per the notification, the allotment letter and Clauses 16 and 17 of the lease-cum-sale agreement, the price of Rs.28,500/- fixed in the year 1976 is only a tentative or estimated price and the final price would be fixed at a later stage after all the bills relating to land acquisition compensation,

final bills of contractors etc., are finalized, and that the petitioner has to pay the final cost as fixed by the Board. It is stated that the final cost of the M.I.G. house was fixed at Rs.38,800/- in the year 1994, and the petitioner paid an amount of Rs.72,956/-, and the difference amount of Rs.34,156/- represents the interest charged for the balance amount towards the difference between the final cost and tentative cost to be paid by the allottee from 1982 to 1995 at the rate of 7.5%, penal interest for the delayed payment of instalments, incidental charges and tax on interest. Thus, it is stated, the Housing Board has not charged any excess amount from the petitioner, and the escalation of Rs.10,300/- in the price of the quarter from 1976 to 1994 is not excessive considering the increase in the cost of all the building materials and labour during that period. It is further stated that the dispute of the petitioner is civil in nature, for which there is an effective alternative remedy in the form of a civil suit. Thus, the respondents pray to dismiss the writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the A.P. Housing Board.

Whether the cost of the subject quarter is Rs.28,500/- or Rs.38,800/-, and whether the petitioner is liable to pay interest on the difference amount between final cost and tentative cost of the quarter, and whether he is liable to pay penal interest, incidental charges and tax on interest, are all disputed questions of fact, which cannot be gone into by this Court under Article 226 of the Constitution of India, and the remedy of the petitioner, if any, is to approach the competent civil court and get his claims adjudicated.

In that view of the matter, the writ petition has no merit and the same is accordingly dismissed. No costs.

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N.V. RAMANA, J

Date: 30-3-2005

Svv

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Chairman, A.P., Housing Board, Gruhakalpa,
Nampally, Hyderabad.
2 The Executive Engineer, A.P. Housing Board, Basent Road,
Governorpet, Vijayawada.

3 Two CD copies